

Honorable Tiffany M. Cartwright

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LEONA M QUALEY,

Plaintiff,

v.

PIERCE COUNTY et al.,

Defendant(s).

CASE NO. 3:23-cv-05679-TMC

STIPULATED PROTECTIVE ORDER

NOTED DATE FOR CONSIDERATION:
WEDNESDAY, APRIL 10, 2024

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

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Pierce County Prosecuting Attorney/Civil Division
930 Tacoma Ave. S., Suite 946, Tacoma, WA 98402-2102
Main: (253) 798-6732 / Fax: (253) 798-6713

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged: Deputy Dolan’s personnel file, Deputy Dolan’s internal affairs
4 investigations, any protected health information for Deputy Dolan contained within any files or
5 records produced, any confidential records protected pursuant to RCW 42.56.230 and 42.56.240,
6 including third party information.
7

8 3. SCOPE

9 The protections conferred by this agreement cover not only confidential material (as
10 defined above), but also (1) any information copied or extracted from confidential material; (2) all
11 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
12 conversations, or presentations by parties or their counsel that might reveal confidential material.
13

14 However, the protections conferred by this agreement do not cover information that is in
15 the public domain or becomes part of the public domain through trial or otherwise.

16 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

17 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
18 or produced by another party or by a non-party in connection with this case only for prosecuting,
19 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
20 categories of persons and under the conditions described in this agreement. Confidential material
21 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
22 that access is limited to the persons authorized under this agreement.
23

24 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
25 by the court or permitted in writing by the designating party, a receiving party may disclose any

1 confidential material only to:

2 (a) the receiving party's counsel of record in this action, as well as employees
3 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

4 (b) the officers, directors, and employees (including in house counsel) of the
5 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
6 agree that a particular document or material produced is for Attorney's Eyes Only and is so
7 designated;

8 (c) experts and consultants to whom disclosure is reasonably necessary for this
9 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

10 (d) the court, court personnel, and court reporters and their staff;

11 (e) copy or imaging services retained by counsel to assist in the duplication of
12 confidential material, provided that counsel for the party retaining the copy or imaging service
13 instructs the service not to disclose any confidential material to third parties and to immediately
14 return all originals and copies of any confidential material;

15 (f) during their depositions, witnesses in the action to whom disclosure is
16 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
17 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
18 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
19 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
20 under this agreement;

21 (g) the author or recipient of a document containing the information or a
22 custodian or other person who otherwise possessed or knew the information.

1 4.3 Filing Confidential Material. Before filing confidential material or discussing or
2 referencing such material in court filings, the filing party shall confer with the designating party,
3 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
4 remove the confidential designation, whether the document can be redacted, or whether a motion
5 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
6 designating party must identify the basis for sealing the specific confidential information at issue,
7 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
8 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
9 the standards that will be applied when a party seeks permission from the court to file material
10 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
11 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
12 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
13 the strong presumption of public access to the Court's files.
14
15

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
18 or non-party that designates information or items for protection under this agreement must take
19 care to limit any such designation to specific material that qualifies under the appropriate
20 standards. The designating party must designate for protection only those parts of material,
21 documents, items, or oral or written communications that qualify, so that other portions of the
22 material, documents, items, or communications for which protection is not warranted are not swept
23 unjustifiably within the ambit of this agreement.
24

25 Mass, indiscriminate, or routinized designations are prohibited. Designations that are

1 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
2 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
3 and burdens on other parties) expose the designating party to sanctions.

4 If it comes to a designating party's attention that information or items that it designated for
5 protection do not qualify for protection, the designating party must promptly notify all other parties
6 that it is withdrawing the mistaken designation.

7
8 5.2 Manner and Timing of Designations. Except as otherwise provided in this
9 agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or
10 ordered, disclosure or discovery material that qualifies for protection under this agreement must
11 be clearly so designated before or when the material is disclosed or produced.

12 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
13 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
14 the designating party must affix the word "CONFIDENTIAL" to each page that contains
15 confidential material. If only a portion or portions of the material on a page qualifies for protection,
16 the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
17 markings in the margins).

18
19 (b) Testimony given in deposition or in other pretrial proceedings: the parties
20 and any participating non-parties must identify on the record, during the deposition or other pretrial
21 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
22 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
23 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
24 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information

1 at trial, the issue should be addressed during the pre-trial conference.

2 (c) Other tangible items: the producing party must affix in a prominent place
3 on the exterior of the container or containers in which the information or item is stored the word
4 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
5 the producing party, to the extent practicable, shall identify the protected portion(s).
6

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
8 designate qualified information or items does not, standing alone, waive the designating party’s
9 right to secure protection under this agreement for such material. Upon timely correction of a
10 designation, the receiving party must make reasonable efforts to ensure that the material is treated
11 in accordance with the provisions of this agreement.
12

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
15 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
16 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
17 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
18 challenge a confidentiality designation by electing not to mount a challenge promptly after the
19 original designation is disclosed.
20

21 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
22 regarding confidential designations without court involvement. Any motion regarding confidential
23 designations or for a protective order must include a certification, in the motion or in a declaration
24 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
25 affected parties in an effort to resolve the dispute without court action. The certification must list
26

1 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
2 to-face meeting or a telephone conference.

3 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
4 intervention, the designating party may file and serve a motion to retain confidentiality under Local
5 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
6 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
7 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
8 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
9 the material in question as confidential until the court rules on the challenge.
10

11 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
12 LITIGATION

13 If a party is served with a subpoena or a court order issued in other litigation that compels
14 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
15 must:

16 (a) promptly notify the designating party in writing and include a copy of the
17 subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to
19 issue in the other litigation that some or all of the material covered by the subpoena or order is
20 subject to this agreement. Such notification shall include a copy of this agreement; and
21

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by
23 the designating party whose confidential material may be affected.
24

25 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

1 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
2 material to any person or in any circumstance not authorized under this agreement, the receiving
3 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
4 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
5 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
6 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
7 Bound” that is attached hereto as Exhibit A.
8

9 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
10 MATERIAL

11 When a producing party gives notice to receiving parties that certain inadvertently
12 produced material is subject to a claim of privilege or other protection, the obligations of the
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
14 is not intended to modify whatever procedure may be established in an e-discovery order or
15 agreement that provides for production without prior privilege review. The parties agree to the
16 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.
17

18 10. NON TERMINATION AND RETURN OF DOCUMENTS

19 Within 60 days after the termination of this action, including all appeals, each receiving
20 party must return all confidential material to the producing party, including all copies, extracts and
21 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

22 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
23 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
24 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
25

1 product, even if such materials contain confidential material.

2 The confidentiality obligations imposed by this agreement shall remain in effect until a
3 designating party agrees otherwise in writing or a court orders otherwise.

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5 DATED: April 8, 2024

s/ Daniel R. Kyler electronic approval
Attorney for Plaintiff Leona M. Qualey
Daniel R. Kyler, WSBA #12905

6 DATED: April 8, 2024

s/ Kerri Ann Jorgensen
Attorney for Defendant Pierce County
Kerri Ann Jorgensen, WSBA #28310
Peter Helmberger, WSBA #23041

7
8
9
10 PURSUANT TO STIPULATION, IT IS SO ORDERED

11 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
12 documents, electronically stored information (ESI) or information, whether inadvertent or
13 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or
14 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
15 documents, including the attorney-client privilege, attorney work-product protection, or any other
16 privilege or protection recognized by law. This Order shall be interpreted to provide the maximum
17 protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.
18 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review
19 of documents, ESI or information (including metadata) for relevance, responsiveness and/or
20 segregation of privileged and/or protected information before production. Information produced
21 in discovery that is protected as privileged or work product shall be immediately returned to the
22 producing party.

23 DATED: _____

24
25 _____
TIFFANY M. CARTWRIGHT
United States District Court Judge

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EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of
 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
 issued by the United States District Court for the Western District of Washington on [date] in the
 case of _____ **[insert formal name of the case and the number and initials
 assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this
 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
 not disclose in any manner any information or item that is subject to this Stipulated Protective
 Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____